United Nations CERD/C/MNE/CO/2-3

International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Concluding observations on the combined second and third periodic reports of Montenegro*

1. The Committee considered the combined second and third periodic reports of Montenegro, submitted in one document (CERD/C/MNE/2-3), at its 2269th and 2270th meetings (CERD/C/SR.2269 and 2270), held on 5 and 6 February 2014. At its 2285th and 2286th meetings (CERD/C/SR.2285 and 2286), held on 17 and 18 February 2014, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the combined second and third periodic reports of the State party, which are in conformity with the Committee's reporting guidelines. The Committee thanks the State party's large, high-level, multisectoral and gender-balanced delegation for its oral presentation and its responses to the Committee's questions and comments.

B. Positive aspects

3. The Committee notes with appreciation a number of legislative and policy developments towards the elimination of racial discrimination, including:

(a) Adoption of the Law on Prohibition of Discrimination, on 27 July 2010;

(b) Adoption of the Law on Free Legal Aid, on 6 April 2011;

(c) Adoption of the Law on the Protector of Human Rights and Freedoms, on 29 July 2011;

(d) Entry into force of the Law on Amendments to the Law on Foreigners, on 7 November 2009;

(e) Adoption of the Law on Amendments to the Law on Minority Rights and Freedoms, on 9 December 2010;

* Adopted by the Committee at its eighty-fourth session (3–21 February 2014).

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(f) Adoption of the Law on Amending the Criminal Code which sanctions hate crime and hate speech, on 30 July 2013;

(g) Adoption of the Action Plan for Resolving the Status of Displaced Persons from Former Yugoslav Republics and Internally Displaced Persons from Kosovo residing in Montenegro, on 29 October 2009;

(h) Adoption of the Strategy for Durable Solutions of Issues Regarding Displaced and Internally Displaced Persons in Montenegro, with Special Emphasis on the Konik Area for the period 2011-2015, on 28 July 2011;

(i) Adoption of the Strategy for Improving the Position of Roma and Egyptians in Montenegro (2012-2016), in March 2012;

(j) Establishment of the Council for Civil Control of Police Work;

(k) Extension, until 31 December 2014, of the deadline for "displaced" and "internally displaced" persons to apply for the status of foreigner with permanent residence in Montenegro under the Law on Amendments to the Law on Foreigners.

4. The Committee welcomes the ratification of the following international instruments during the period under consideration:

(a) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 6 March 2009;

(b) Convention on the Rights of Persons with Disabilities, on 2 November 2009;

(c) Optional Protocol to the Convention on the Rights of Persons with Disabilities, on 2 November 2009;

(d) International Convention for the Protection of All Persons from Enforced Disappearance, on 20 September 2011;

(e) Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, on 24 September 2013;

(f) Convention on the Reduction of Statelessness, on 5 December 2013.

C. Concerns and recommendations

Relevant statistical data

5. While noting the statistical data, based on the April 2011 census, provided orally by the delegation of the State party, the Committee regrets the delay in the processing of the data obtained from the census and the absence of disaggregated data it had requested previously on the socioeconomic situation and, in particular, the situation of the various ethnic minorities (art. 2).

Recalling its revised reporting guidelines (CERD/C/2007/1), the Committee reiterates that disaggregated data on the ethnic or national origin and on the socioeconomic and cultural status of different groups are useful tools for assessing the representation of the various minority groups in public bodies and institutions that would enable the State party to enhance the equal enjoyment by all of the rights enshrined in the Convention. The Committee recommends that the State party analyse the data obtained during the 2011 census and provide the Committee with information on the ethnic composition of the population, disaggregated data on the socioeconomic situation in the State party, in particular with regard to the different ethnic groups, including persons of Roma, Ashkali and Egyptian origin.

Harmonization of national legislation with the Convention and international law

6. While noting the primacy of international law over national legislation, the Committee is concerned that the Parliament of Montenegro has not harmonized national legislation with the Convention (art. 2).

The Committee encourages the State party to bring national legislation into line with international standards, in particular those enshrined in the Convention. The Committee requests the State party to provide it with information on cases where the Convention has been invoked directly in national courts.

Legislation prohibiting racist organizations

7. The Committee notes the absence of legislation in the State party declaring organizations which promote and incite racial discrimination illegal (arts. 2 and 4 (b)).

The Committee recommends that the State party amend its legislation to declare organizations that promote and incite racial discrimination illegal.

Racist motivation as an aggravating circumstance

8. The Committee is concerned that racial, national, ethnic or ethno-religious motivation is not regarded as an aggravating circumstance in determining the punishment of crimes (art. 4).

The Committee recommends that the State amend the Criminal Code to include racial, national, ethnic or ethno-religious motivation as an aggravating circumstance when determining the punishment of crimes.

Enforcement of the Law on Prohibition of Discrimination

9. The Committee is concerned about the small number of cases of racial discrimination before the courts and about the low number of convictions in such cases. It is also concerned at information that even very serious cases of incitement to racial hatred are treated as misdemeanours and that they seldom result in convictions (arts. 2, 4, 5, 6 and 7).

Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party:

(a) Conduct broad awareness-raising campaigns at the local and national levels on how to report cases of racial discrimination and incitement to racial hatred to the Ombudsman and other relevant authorities and how to bring them before courts;

(b) Strengthen initial and in-service training of judges, prosecutors, lawyers and police officers on how to identify and sanction racially motivated offences;

(c) Provide training to judges, prosecutors, lawyers and police officers on the provisions in criminal legislation relating to racism, equal treatment and non-discrimination and provide an evaluation of such training in the next periodic report;

(d) Ensure that criminal acts relating to racial discrimination, incitement to racial hatred and racially motivated hate crimes are prosecuted at a level commensurate with their seriousness, and expedite such cases;

(e) Establish a mechanism to recognize, record and analyse such cases and provide information on their incidence in the next periodic report.

Protector of Human Rights and Freedoms (Ombudsman)

10. While appreciating the increase in the staff and budget for the Protector of Human Rights and Freedoms (Ombudsman) and noting that the office has already dealt with a certain number of cases of discrimination, the Committee is concerned that the Ombudsman still lacks the necessary human, technical and financial resources to fulfil his mandate, given his recent designation as the institutional mechanism for protection against discrimination and as the national preventive mechanism under the Optional Protocol to the Convention against Torture and Other Cruel or Degrading Treatment or Punishment. It is also concerned that the Ombudsman does not have investigative powers or the authority to initiate and participate in court proceedings relating to discrimination (art. 2).

In the light of its general recommendation No. 17 (1993) on the establishment of national institutions to facilitate the implementation of the Convention, the Committee requests that the State party:

(a) Provide the Ombudsman with the necessary human, technical and financial resources to fulfil the recently expanded mandate of the office;

(b) Conduct a broad campaign at the national and local levels to raise awareness about the Ombudsman's mandate and competence;

(c) Evaluate the effectiveness of the Ombudsman's activities and include the findings in the next periodic report;

(d) Consider broadening the mandate of the Ombudsman to include investigative powers and the authority to initiate and participate in judicial proceedings relating to discrimination;

(e) Encourage the Ombudsman to apply to the International Coordinating Committee of National Human Rights Institutions for accreditation as the national institution for the promotion and protection of human rights, in accordance with the Principles relating to the status of national institutions (the Paris Principles).

Stigmatization of and discrimination against persons of Roma, Ashkali and Egyptian origin

11. The Committee is concerned at the negative attitudes, stigmatization and discrimination against people of Roma, Ashkali and Egyptian origin, in particular persons from Kosovo (arts. 2, 5 and 7).

In accordance with its general recommendations No. 7 (1985) on legislation to eradicate racial discrimination (art. 4), No. 15 (1993) on organized violence based on ethnic origin (art. 4), No. 27 (2000) on discrimination against Roma and No. 30 (2005) on discrimination against non-citizens, the Committee recommends that the State party:

(a) Organize human rights training for law enforcement officials, judges, teachers, medical staff and social workers in order to foster an awareness of tolerance, interethnic dialogue and harmony, on the basis of the Convention and relevant national legislation;

(b) Conduct information campaigns for the general public focusing on the prevention of discrimination against persons of Roma, Ashkali and Egyptian origin;

(c) Intensify efforts to end discrimination against persons of Roma, Ashkali and Egyptian origin, in particular those from Kosovo, in all spheres of public life.

Legal status of "displaced" and "internally displaced" persons

12. While taking note of the strategies and action plans adopted by the State party to find a durable solution to the uncertain legal status of "displaced" persons (from the former Yugoslav republics) and "internally displaced" persons (from Kosovo) in Montenegro, the Committee is concerned that many such persons are at risk of becoming stateless. It is concerned that a number of "internally displaced" persons of Roma, Ashkali and Egyptian origin have difficulty obtaining certain personal documents required to apply for the status of foreigner under the Law on Amendments to the Law on Foreigners (arts. 2, 4, 5, 6 and 7).

Recalling its general recommendation No. 30 on discrimination against non-citizens, the Committee recommends that the State party:

(a) Simplify the procedure for "displaced" and "internally displaced" persons to qualify for the status of foreigner under the Law on Amendments to the Law on Foreigners;

(b) Raise the awareness of the persons concerned in a simple, accessible and well-publicized manner about the importance of registering, having proof of registration or having documents for themselves and their children;

(c) Enhance assistance to persons facing problems with the payment of administration fees and continue to organize bus visits in order to help them obtain the documents required to apply for foreigner status in Montenegro;

(d) Establish a simplified birth registration procedure and issue documents to all persons born in the territory of the State party;

(e) Devise a strategy and take administrative and judicial measures to register or retroactively register children born outside of established health institutions.

Housing situation of persons of Roma, Ashkali and Egyptian origin in the Konik camp

13. The Committee is seriously concerned that persons of Roma, Ashkali and Egyptian origin who were "internally displaced" from Kosovo continue to live in deplorable conditions in the Konik camp near Podgorica, which is located on the site of a garbage dump and has been subject to flood and fire in the recent past. The Committee is particularly concerned that, despite the adoption of the strategy for durable solutions in 2011, the camp continues to lack basic utilities and services, such as electricity, running water and sanitation, and that the construction of housing for the inhabitants of the Konik camp has still not begun. The Committee is also concerned that the inhabitants of the camp live in de facto segregation (arts. 2, 3 and 5).

Recalling its general recommendations No. 3 (1972) on reporting by States parties, No. 27 (2000) on discrimination against Roma and No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party:

(a) Take urgent measures to improve the living conditions in the Konik camp and implement a sustainable strategy aimed at its prompt closure;

(b) Urgently begin building the 60 housing units for Konik residents that were announced for 2014 by the delegation of the State party, start construction of the other several hundred housing units without delay, and continue to ensure the availability of funds, including through fundraising with donors;

(c) Foster the local integration of persons of Roma, Ashkali and Egyptian origin, including the residents of Konik, in communities throughout the country and

ensure that they are provided with adequate living and housing conditions, in order to avoid segregation.

Children of Roma, Ashkali and Egyptian origin in the educational system

14. The Committee is concerned about the low rate of enrolment, low school attendance and high drop-out rate among children of Roma, Ashkali and Egyptian origin, especially after the age of 11, including for reasons of child labour, child marriage and forced marriage in the case of girls. The Committee is also concerned at the high number of Roma children living and working in the streets, which makes them vulnerable to trafficking and economic and sexual exploitation. In addition, the Committee is concerned at the lack of instruction in the Roma language and the de facto segregation of children of Roma, Ashkali and Egyptian origin studying at the Konik branch of the Božidar Vuković Podgoričanin school (arts. 2, 3, 5 and 7).

In the light of its general recommendations No. 19 (1995) on racial segregation and apartheid and No. 27 (2000) on discrimination against Roma, the Committee recommends that the State party:

(a) Provide free education, textbooks and transportation to children of Roma, Ashkali and Egyptian origin in order to avoid segregation, ensure their integration in local educational facilities and close the Konik branch of the Božidar Vuković Podgoričanin school;

(b) Ensure that children of Roma, Ashkali and Egyptian origin without birth registration or identity documents do not suffer discrimination in accessing education and in the school environment;

(c) Intensify efforts to increase enrolment and reduce the drop-out rate among children of Roma, Ashkali and Egyptian origin, by raising the awareness of parents about the value of continued education for their children's long-term socioeconomic wellbeing and about the adverse consequences to their health and future prospects of child labour, child marriage and forced marriage;

(d) Enhance the enrolment of children of Roma, Ashkali and Egyptian origin in kindergartens and other preschool educational facilities in order to improve their knowledge of the Montenegrin language;

(e) Increase the use of Roma teaching assistants and mediators in schools and encourage teachers to consider dedicating part of the curriculum to the Roma language;

(f) Monitor child labour, in particular in the informal and domestic sectors, and provide protection and information to children of Roma, Ashkali and Egyptian origin living in the street in order to prevent them from becoming victims of trafficking and economic and sexual exploitation.

Socioeconomic situation of persons of Roma, Ashkali and Egyptian origin

15. The Committee is concerned at the difficult economic situation and high unemployment rate of persons of Roma, Ashkali and Egyptian origin in the State party due to their lack of qualifications and high levels of illiteracy, but also to direct and indirect discrimination. While noting that members of these minority groups are classified as "hard to employ persons" owing to their lack of qualifications and high illiteracy rate, the Committee is concerned that the members of these minority groups are also subjected to direct and indirect discrimination (art. 5).

Recalling its general recommendation No. 27 (2000) on discrimination against Roma, the Committee recommends that the State party:

(a) Monitor and remedy cases of direct or indirect discrimination against persons of Roma, Ashkali and Egyptian origin and take special measures to achieve equality for them in keeping with article 5 of the Law on Prohibition of Discrimination;

(b) Strengthen efforts to increase the employability and employment of persons of Roma, Ashkali and Egyptian origin through adult literacy and vocational training programmes, and enhance affirmative action by implementing the active employment policy as well as by granting them tax exemptions, subsidies and interest-free loans;

(c) Raise awareness about the double discrimination against women of Roma, Ashkali and Egyptian origin in education, employment and health care, and take specific measures to address and overcome this form of discrimination.

Situation of asylum seekers

16. The Committee is concerned at the delay in the opening of the reception centre for asylum seekers near Podgorica, which should have been operational by late 2011 (arts. 5 and 6).

In the light of its general recommendation No. 22 (1996) on article 5 and refugees and displaced persons, the Committee recommends that the State party:

(a) Provide asylum seekers currently living in private facilities with sufficient food and basic medical care;

(b) Complete without delay the construction of the reception centre for asylum seekers near Podgorica, taking into account current numbers, and provide it with the necessary staff and facilities to enable it to function correctly.

D. Other recommendations

Ratification of other treaties

17. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying international human rights treaties which it has not yet ratified, in particular treaties with provisions that have a direct relevance to communities that may be the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Follow-up to the Durban Declaration and Programme of Action

18. In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and take into account the outcome document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

Amendment to article 8 of the Convention

19. The Committee reiterates its recommendation that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee refers to General Assembly resolutions 61/148, 63/243, 65/200 and 67/156, in which the Assembly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

Consultations with organizations of civil society

20. The Committee recommends that the State party continue consulting and expanding its dialogue with civil society organizations working in the area of human rights protection, in particular combating racial discrimination, in connection with the preparation of the next periodic report and the follow-up to the present concluding observations.

Dissemination

21. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to those reports be similarly publicized in the official and other commonly used languages, as appropriate.

Follow-up to concluding observations

22. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 9, 12 and 14 (b) above.

Paragraphs of particular importance

23. The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations in paragraphs 13, 14, 15 and 16 above and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement those recommendations.

Preparation of the next periodic report

24. The Committee recommends that the State party submit its combined fourth to sixth periodic reports, in one document, by 3 June 2017, taking into account the specific reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60 to 80 pages for the common core document (HRI/GEN.2/Rev.6, chap. I, para. 19).